



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 3811-01
10 October 2001

MA [REDACTED] MC

De [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your request to adjust your lieutenant colonel date of rank and effective date to reflect selection by the Fiscal Year (FY) 2002 Lieutenant Colonel Selection Board was not considered, as you have not been selected for or promoted to lieutenant colonel.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 September 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 7 May 2001 with two enclosures, and the advisory opinions from the HQMC Promotion Branch, dated 24 May 2001, and the HQMC Officer Assignment Branch, Personnel Management Division, dated 6 August 2001, copies of which are attached. They also considered your rebuttal letters dated 6 July 2001 with enclosures, 16 July 2001 with enclosure, and 28 August 2001.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in finding no correction of your fitness report record to be warranted. The absence, from the reporting senior's 27 April 2001 memorandum for the record, of any comment on the issue of alteration of your ranking did not persuade the Board that your correct ranking was other than "5 of 5." They were unable to find the ranking was other than "5 of 5" when the

reviewing officer reviewed it, noting that the reviewing officer's letter of 25 June 2001 (enclosure (2)) to your letter of 6 July 2001) stated that he could not recall with certainty what marks the reporting senior had entered, nor could he recall saying to you that he would have questioned a "5 of 5" ranking. Finally, the Board was unable to find that the "5 of 5" ranking was based on the results of a supply account inquiry which led to no official action against you.

Since the Board found no defect in your performance record, and they were unable to find that the reporting senior could not consider you fairly in his capacity as a member of the FY 2002 Lieutenant Colonel Selection Board, they had no basis to strike your failure of selection by that promotion board, or to recommend your consideration by a special selection board.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

3811-61

IN REPLY REFER TO:

1610
MMER/PERB
7 MAY 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) [REDACTED]'S DD Form 149 of 6 Feb 01
(b) MCO P1610.7C w/Ch 1-6

Encl: (1) Copy of ODI Fitness Report 931101-940729 (TR)
(2) Copy of [REDACTED] MFR 1600 MKH of 27 Apr 01

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 26 April 2001 to consider [REDACTED] petition contained in reference (a). Modification to the Reporting Senior's ranking on page two of the fitness report for the period 931101 to 940729 (TR) was requested. If that action is not possible, then the petitioner asks for complete removal of the report. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that he had originally been ranked as "2 of 5" in the Reporting Senior's Certification, but that someone altered the entry to appear as "5 of 5." He points out that such a modification is a clear violation of reference (b) and "...prevented a substantially accurate, complete and fair portrayal..." of his record. To support his appeal, the petitioner furnishes his own statement, statements from Lieutenant General [REDACTED] Commanding General, Marine Forces Pacific) and [REDACTED] (former Officer Career Counselor), excerpts from SECNAVINST 1401.1B and MCO P1610.7C, and a copy of the challenged fitness report.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner is correct in stating that subparagraph 4001.5e of reference (b) does not allow erasures or corrections to the ranking on page two of the fitness report (Reporting

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Senior's Certification). However, the Board does not find this to invalidate an otherwise completely acceptable evaluation. In this regard, a member of the PERB staff contacted the Reporting Senior and asked him to clarify the issue. Colone [REDACTED] was adamant that the petitioner's correct ranking was "5 of 5" and that at no time was it his intent to rank him as "2 of 5." To clarify the situation, the PERB obtained a more legible copy of the report from the ODI system. We have directed its insertion onto the petitioner's Official Military Personnel File (OMPF) to replace the existing version, and have also directed the insertion of a Memorandum for the Record from the Reporting Senior clarifying the ranking issue. Enclosures (1) and (2).

b. The petitioner's contention that the ranking was "2 of 5" when he first sighted and signed the report is not substantiated. Surely it would have been an easy matter for him to have solicited a supporting statement from either the Reporting Senior or Reviewing Officer. He did neither.

c. The statement from [REDACTED] although supportive, adds nothing substantive. He merely indicates that what he saw when he reviewed the petitioner's record is precisely what appears at this time.

d. Although the Board does not generally refer to prior reporting periods, in this instance we find it germane. In the two reports prior to the one at issue, the petitioner was rated in the "outstanding" category as "3 of 4" and "4 of 5", respectively. The Reporting Senior of both reports (Lieutenant Colonel [REDACTED] acknowledged that the petitioner was competing against a fast pack of more experienced officers, but that his efforts and accomplishments were no less diminished. Colonel [REDACTED] is the Reviewing Officer on those two reports, as he was on the challenged report, and concurred in both assessments with his added evaluative comments. It is reasonable to believe that if Colone [REDACTED] had considered the "5 of 5" to be unusual he would have so stated in his review. There is no such commentary.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

of Major [REDACTED] official military record. The limited
action identified in subparagraph 3a is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]

Major General U. S. Marine Corps
Director, Personnel Management
Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

3871-0
:610:

REPORTING OFFICER (Name and Grade)	GRADE	ORGANIZATION NO.	REPORT NO.	OCCASION
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For only those Marines of the same grade as the Reporting Senior. (If the Reporting Senior is a Captain or Major, I rank this Marine as of the same grade as the Reporting Senior, if available).

NAME	GRADE	REPORT NO.				
BAKER	W	0802	LORKONSKI	DONALD	L	0802
BARRERA	L	0802	MCALLISTER	JAMES	C	0802
BOND	P	0802	STARK	TIMOTHY	R	0802
ENGEL	A	0802				

SIGNATURE  DATE 1 Aug 94

REVIEWING OFFICER'S CERTIFICATION

1. I have not had sufficient opportunity to observe this Marine. I have no comment.
2. I have had only limited opportunity to observe this Marine, but from what I have observed I generally concur with the Reporting Senior's marks in items 15a and b.
3. I have had sufficient opportunity to observe this Marine, and concur with the Reporting Senior's marks in Items 15a and b.
4. I have had sufficient opportunity to observe this Marine, and do not concur with the Reporting Senior's marks in items 15a and b. I would evaluate the Reporting Senior's marks as Outstanding (OG) (Item 15a) and rank this Marine as OG of OG (only rank this Marine as Outstanding (OG)).

REMARKS (mandatory if Item 4, above, is checked)

Talented. Ready to accept the challenges associated with joint assignments. Flexible and responsible. Willing to go to ILS.

DATE 27 Aug 94

Program

3811-01



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600

MKH

27 Apr 01

MEMORANDUM FOR THE RECORD

Subj: Fitness Report on [REDACTED]
[REDACTED] C for the Period 931101 to 940729 (TR)

1. This is to certify that in the "Reporting Senior's Certification" on subject fitness report, I ranked Major [REDACTED] of 5."

[REDACTED]

COL USMC



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1412/2
MMPR
24 MAY 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Route Sheet of 16 May 2001
(b) SECNAVINST 1401.1B
(c) MCO P1400.31

1. Reference (a) requested an advisory opinion in the case of Major [REDACTED] Major [REDACTED] requesting removal or correction of his fitness report for the period 931101 to 940729 and a special selection board.

2. The following facts are germane:

a. Major [REDACTED] was eligible and not selected as an in zone officer on the FY01, and as an above zone officer on the FY02, USMC Lieutenant Colonel Promotion Selection Boards, which convened on 991019 and 001011 respectively.

b. The report in question had been in Ma [REDACTED] record for over five years when he was first considered for promotion to lieutenant colonel. Ma [REDACTED] made no effort to have the report removed from his record until 010206, nearly seven years after the report was written and after twice failing of selection.

3. Promotion Branch defers comment on the correction to the fitness report to the Performance Evaluation Review Board. Further, we recommend that his request for a special selection board through BCNR be denied since he has not exhausted the appropriate administrative procedures for requesting a special selection board set forth in references (b) and (c)

4. The point of contact in this matter is Capt [REDACTED]
[REDACTED]

[REDACTED]
Colonel, U. S. Marine Corps
Head, Promotion Branch



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1600
MMA-4
6 Aug 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED] 53 43 0108
USMC of 31 July 01.

1. Recommend disapproval of [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed [REDACTED] record and petition. [REDACTED] failed selection FY-02 USMC Lieutenant Colonel Selection Board. Subsequently, the Performance Evaluation Review Board (PERB) denied his request for removal of the Transfer fitness report of 931101 to 940729. [REDACTED] requests removal of his failure of selection.
3. In our opinion, [REDACTED] record, as it appeared before the board, was complete, accurate, and provided a fair assessment of his performance. Had the petitioned report been removed, the record would have been more competitive, but not enough to warrant removal of the failure of selection. Since the unfavorable PERB action did not change the competitiveness of the record, we recommend disapproval of [REDACTED] request for removal of his failure of selection.

4. POC [REDACTED]

Colonel, U. S. Marine Corps
Asst Branch Head,
Officer Assignment Branch
Personnel Management Division